No. 214

Office - Supreme Court, U.S.
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IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT.

No. 11,582

UNITED STATES OF AMERICA

vs.

GEORGE MASTROS,

Appellant.

APPEAL FROM THE JUDGMENT AND SENTENCE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA (CRIMINAL ACTION No. 18367).

Appendix for Appellant

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RELEVANT DOCKET ENTRIES.

1955

May 5. True Bill.

Aug. 2. Plea: Not Guilty.

1956

Apr. 9. Jury called and sworn.

Apr. 13. Trial concluded — Count #2 dismissed by the Court.

April 13. Verdict—Guilty on Count #1. Bail continued.

Apr. 16. Defendant's renewal of motion for judgment of acquittal and in alternative a motion for a new trial, filed.

1958

Jan. 9. Opinion, Ganey, J., denying motion for judgment of acquittal and for a new trial, filed.

Feb. 14. Sentence. Imprisonment for a period of thirty days. Execution of the prison sentence is suspended. $500.00 fine. Probation for two years.

Feb. 20. Notice of Appeal filed.

INDICTMENT.

THE GRAND JURY CHARGES:

COUNT I.

That on or about July 31, 1953 in the Eastern District of Pennsylvania, and within the jurisdiction of this court, GEORGE MASTROS, hereinafter referred to as defendant, did make and present, or cause to be made and presented, for payment and approval to the Department of the Army, an agency or department of the United States, a claim against the United States for radio-telephone electronic units on behalf of Espey Manufacturing Company, Inc., in the sum of $1,128,875.81, knowing such claim to be false, fictitious and fraudulent in that the aforesaid defendant made and presented or caused to be made and presented to the Department of the Army, a settlement proposal dated July 31, 1953, on behalf of Espey Manufacturing Company, Inc., which settlement proposal stated $1,128,875.81 was due and owing to the Espey Manufacturing Company, Inc., for radio-telephone electronic units which claim was false since said defendant knew well that the total amount due and owing to the Espey Manufacturing Company, Inc., on said settlement claim was substantially less than the amount claimed; all of which is in violation of Title 18, U. S. C., Section 287.

TESTIMONY.

* * * (N. T. pp. 1 and 2.)

(2) GOVERNMENT'S EVIDENCE.

HOWARD E. MOORE, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. FOGWELL:

Q. Mr. Moore, by whom are you employed?
A. By the Army Signal Supply Agency, formerly the Signal Corps.

* * * (N. T. pp. 2 and 3.)

(3) Q. At my request have you brought with you certain documents concerning the Espey Manufacturing Company?
A. I have.
Q. Have you brought the original contract in this case?
A. I have brought a certified photostatic copy of the contracts—of the contract and amendments.

(Photostat of Contract issued by Signal Corps to Espey Manufacturing Company dated 16 June 1950 marked Exhibit G-1.)

BY MR. FOGWELL:

(4) Q. I show you what Mr. Homan has labeled G-1 and ask you what it is.
A. This is the original—or photostatic copy of the original contract dated 16 June 1950 awarded the Espey Manufacturing Company, Inc., by the Signal Corps.
Q. And it is a contract the Government had with what company, if any?

A. Well, the Government awarded the contract to the Espey Manufacturing Company.

Q. What is the amount of the original contract?

A. $2,752,422.75. That is with the discount deducted.

Q. What was to be produced by Espey?

A. 17,000 Control Group AN/GRA-6 and other items related to that piece of equipment.

THE COURT: Give me the amount of the contract again, please, Mr. Moore.

THE WITNESS: $2,752,422.75.

BY MR. FOGWELL:

Q. Now, if you know, was this what is called a supply contract or a development contract?

A. This was a production contract, as we refer to it, for materials.

Q. What was the original date of it again?

(5) A. 16 June 1950.

Q. When were deliveries to be made?

THE COURT: What are these 17,000 units other than by number? Can you tell us what they are, sir?

THE WITNESS: Well, it is some radio equipment of some kind. I cannot tell you exactly what they are. They are a rather complicated piece of equipment.

THE COURT: Are they single units, the 17,000?

THE WITNESS: Yes, there are several items that go to make up the end item.

MR. FOGWELL: Judge Ganey, it is a radio communications item which goes in the top of a tank to transmit and

receive messages from tank to tank in the field. Accordingly, they are separate units.

THE COURT: We will call them 17,000 X's.

MR. FOGWELL: That is all right, sir.

BY MR. FOGWELL:

Q. Were any deliveries made on this contract, if you know?

A. No deliveries of the end item, that is, this equipment, were made. There were some other items totaling approximately 29,000 delivered. These items were not terminated.

Q. Do you know the date the contract was terminated?

A. 19 February 1953.

Q. If you know, how much was provided in the contract (6) for the writing of manuals?

A. Well, literature and tabular lists of parts totaled $3,062.50.

THE COURT: Three thousand ——

THE WITNESS: Sixty-two fifty.

BY MR. FOGWELL:

Q. Now, are you familiar with the Job 381?

A. Is this the contractor's job number?

Q. Yes, if you are familiar with it. Are you?

A. I am not.

(Photostat of copy of letter dated February 25, 1952, to contracting officer, Signal Corps Supply Agency from Espey, marked Exhibit G-2.)

BY MR. FOGWELL:

Q. I show you what Mr. Homan has labeled G-2. Will you be good enough to tell the jury what that is.

A. The contractor under date of February 25, 1952, submitted a request for relief. Under Title 2 of the first War Powers Act of 1941 as amended, the Act provides that the contractor can seek reimbursement for losses incurred or estimated to be incurred on a contract that appears to be a loss contract.

Q. What was the date of this hardship claim?

A. Well, it was submitted on 25 February 1952.

(7) Q. So that the original contract was entered into in 1950 and the hardship claim was made some two years later?

A. That is correct.

Q. And the contract terminated about a year after that; is that correct?

A. Well, the contract was terminated on 19 February 1953.

* * * (N. T. pp. 7 and 8.)

(8) (Document dated February 21, 1952, revised August 15, 1952, Schedule 1, marked Exhibit G-3.)

BY MR. FOGWELL:

Q. I show you a series of papers which Mr. Homan has labeled G-3. Can you tell us what that is?

A. Well, this is a schedule supporting the data handed to me by one of the officers or representatives of the contractor —that is Espey Manufacturing Company—at the hearing held in the Pentagon Building on 5 September 1952. This schedule was supposed to indicate the costs incurred to date and the costs estimated to complete of all of the contracts this contractor held with the Government. We are

particularly interested here in Order No. 21440 Phila. 50 and contractor's Job No. 381 in which the contractor indicated that costs in the amount of $26,000 had been (9) incurred, total costs, as of 15 August 1952.

Q. So that what you are saying is that the big sheet concerns itself with other Government contracts which Espey Company had with the Government?

A. That is correct. The total here is supposed to show those contracts which the contractor would make a profit on and those contracts on which he would lose money, and what the net loss for the production of those contracts would be to the contractor.

THE COURT: What was that, 15,000?

THE WITNESS: This was $26,000 total costs incurred.

BY MR. FOGWELL:

Q. And what, briefly, again is that $26,000 figure that Judge Ganey asked you about?

A. Well, it is indicated here as inventory by the schedule, what proportion I think, by close scrutiny, that this represents all the costs incurred as of that date.

Q. As of which date, sir?

A. As of ——

THE COURT: August 15.

THE WITNESS: August 15, 1952.

(Modification to Supplemental Agreement to Order No. 21440—Phila. 50-37, Contract No. DA-36-039-SC-3775 marked Exhibit G-4.)

(10) BY MR. FOGWELL: